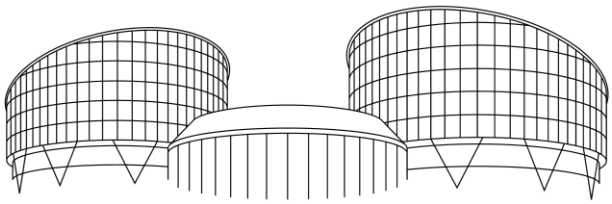

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF FETHULLAH[1] AKPULAT[2] v. TURKEY

(Application no. 22077/03)

JUDGMENT

This version was rectified on 14 September and 18 October 2011 under Rule 81 of the Rules of Court

STRASBOURG

15 February 2011

FINAL

15/05/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

1. Rectified on 18 October 2011. The applicant's name read "Fetullah" in the former version of the judgment.
2. Rectified on 14 September 2011. The applicant's surname read "Akpolat" in the former version of the judgment.

In the case of Fethullah[1] Akpulat[2] v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Danutė Jočienė,
Dragoljub Popović,
Nona Tsotsoria,
Işıl Karakaş,
Kristina Pardalos, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar,*

Having deliberated in private on 25 January 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 22077/03) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Fethullah[1] Akpulat[2] ("the applicant"), on 22 April 2003.

2. The applicant was represented by Mr F. Babaoğlu, a lawyer practising in Ankara. The Turkish Government ("the Government") were represented by their Agent.

3. The applicant alleged under Articles 5 § 3 and 6 § 1 of the Convention that the length of his pre-trial detention and the criminal proceedings against him had been excessive. He also maintained that the seizure of his correspondence had breached his rights protected by Articles 8 and 10 of the Convention.

4. On 17 June 2008 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints concerning the applicant's rights to release pending trial, to a fair hearing within a reasonable time and concerning the alleged unjustified interference with the applicant's right to respect for his correspondence. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

1. Rectified on 18 October 2011. The applicant's name read "Fetullah" in the former version of the judgment.
2. Rectified on 14 September 2011. The applicant's surname read "Akpolat" in the former version of the judgment.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and was detained in the Üsküdar prison as at the time of his application to the Court.

A. The criminal proceedings against the applicant

6. On 6 January 1993 the applicant was taken into police custody in Istanbul on suspicion of membership of the PKK (Kurdistan Workers' Party, an illegal organisation).

7. On 13 January 1993 he was brought before a single judge at the Istanbul Security Court who remanded him in custody.

8. On 25 January 1993 the public prosecutor at the Istanbul State Security Court filed an indictment against the applicant and seventeen other people. The applicant was charged with membership of the PKK under Article 168 of the former Criminal Code.

9. On 10 October 2001 the Istanbul State Security Court, after having held ten hearings, found the applicant guilty of activities carried out for the purpose of bringing about the secession of part of the national territory under Article 125 of the former Criminal Code. The applicant was sentenced to death, commuted to life imprisonment.

10. On 12 February 2002 the Court of Cassation quashed the judgment of the first-instance court on the grounds that the Istanbul State Security Court had found that the applicant had committed certain acts which had not been included in the indictment of 25 January 1993.

11. On 12 September 2002 the public prosecutor at the Istanbul State Security Court filed an additional indictment against the applicant, containing allegations that the applicant had committed the acts referred to in the State Security Court's judgment of 10 October 2001.

12. On 5 November 2003 the Istanbul State Security Court once again convicted the applicant under Article 125 of the former Criminal Code. (This judgment was not submitted to the Court).

13. On 12 April 2004 the Court of Cassation upheld the judgment of 5 November 2003.

14. On 23 September 2004 the Public Prosecutor at the Court of Cassation dismissed the applicant's request for rectification of the decision of 12 April 2004.

B. The seizure of the applicant's correspondence

15. On 19 November 2003 the Prison Disciplinary Board seized a letter written by the applicant and addressed to the "President of the United Kingdom" with a view to destroying it, considering that it "would stir up trouble" ("*sakıncalı*" in Turkish).

16. On 3 December 2003 the applicant lodged an objection to the decision of 19 November 2003 with the Üsküdar Post-Sentencing Judge.

17. On 10 December 2003 the Üsküdar Post-Sentencing Judge upheld the Prison Disciplinary Board's decision. The judge held that the letter had been written as propaganda in favour of the PKK terrorist organisation and its leader, because it contained allegations that Abdullah Öcalan had been pressurised and isolated in prison.

18. On 25 December 2003 the Üsküdar Assize Court dismissed the applicant's objection to the decision of 10 December 2003.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. A description of the relevant domestic law and practice prior to the entry into force of the new Code of Criminal Procedure (CCP) (Law no. 5271) on 1 June 2005 may be found in *Çobanoğlu and Budak v. Turkey* (no. 45977/99, §§ 29-31, 30 January 2007). The current practice under Law no. 5271 is outlined in *Şayık and Others v. Turkey* (nos. 1966/07, 9965/07, 35245/07, 35250/07, 36561/07, 36591/07 and 40928/07, §§ 13-15, 8 December 2009).

20. The relevant domestic law in regard to the applicant's complaint under Article 8 may be found in *Tan v. Turkey*, no. 9460/03, §§ 13-14, 3 July 2007.

THE LAW

I. ADMISSIBILITY

21. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

22. The applicant complained that the length of his pre-trial detention had exceeded the reasonable time requirement under Article 5 § 3 of the Convention, which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

23. The Government maintained that the applicant's detention had been based on the existence of reasonable grounds of suspicion of his having committed an offence, and that his detention had been reviewed periodically by the competent authority, with special diligence, in accordance with the requirements laid down by applicable law. They pointed out that the offence with which the applicant had been charged was of a serious nature, and that his continued remand in custody was necessary to prevent crime and to preserve public order.

24. The Court notes two periods of detention in the present case. The first period began on 6 January 1993, when the applicant was taken into police custody, and ended on 10 October 2001, when the Istanbul State Security Court convicted the applicant. From that point on, and until the Court of Cassation's decision of 12 February 2002, the applicant was detained "after conviction by a competent court", which falls within the scope of Article 5 § 1 (a) of the Convention. The first period thus lasted eight years, nine months and four days**.** The second period began on 12 February 2002, when the Court of Cassation quashed the first-instance court's judgment, and ended on 5 November 2003 with the State Security Court's judgment. The second period thus lasted one year, eight months and twenty four days**.** Accordingly, the period to be taken into consideration in the instant case is approximately ten years and six months (see *Solmaz v. Turkey*, no. 27561/02, §§ 36-37, ECHR 2007-II (extracts)).

25. The Court has frequently found violations of Article 5 § 3 of the Convention in cases disclosing comparable lengthy periods of pre-trial detention (see, for example, *Tutar v. Turkey*, no. 11798/03, § 20, 10 October 2006, and *Cahit Demirel v. Turkey*, no. 18623/03, § 28, 7 July 2009). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that in the instant case the length of the applicant's pre-trial detention was excessive.

26. There has accordingly been a violation of Article 5 § 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

27. The applicant complained that the length of the criminal proceedings against him had been incompatible with the reasonable time requirement, laid down in Article 6 § 1 of the Convention. The Government disputed this allegation.

28. The Government submitted that the length of the proceedings could not be considered to be unreasonable in view of the complexity of the case, the number of the accused and the nature of the offence with which the applicant was charged.

29. The Court notes that the criminal proceedings in the present case began on 6 January 1993, when the applicant was arrested, and ended on 12 April 2004, when the Court of Cassation rendered the final decision in the case. They thus lasted eleven years and three months across two levels of jurisdiction.

30. The Court has frequently found violations of Article 6 § 1 of the Convention in applications raising issues similar to the one in the present case (see *Bahçeli v. Turkey*, no. 35257/04, § 26, 6 October 2009, and *Er v. Turkey*, no. 21377/04, § 23, 27 October 2009). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Court therefore considers that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

31. The applicant further complained that the prison authorities' seizure of his letter addressed to the "President of the United Kingdom" had violated his right to respect for correspondence guaranteed by Article 8 of the Convention, which reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

32. The Government submitted that the interference in question had been prescribed by law and had pursued a number of legitimate aims, namely the protection of national security, territorial integrity, public safety,

public order and prevention of crime. They also claimed that the restriction had been necessary in a democratic society because it had been carried out as a result of a pressing social need and had been proportionate to the legitimate aims pursued. They concluded that, in the exercise of their discretion, the prison authorities had decided not to allow the impugned letter to be sent outside.

33. The applicant maintained his allegations.

34. The Court notes that it has already examined the same grievance in the case of *Tan v. Turkey* (cited above, §§ 15-26) where it found a violation of Article 8 of the Convention. In that judgment the Court held that sections 144 and 147 of Regulation no. 647 on prison management and the service of sentences did not indicate with sufficient clarity the scope and arrangements for exercise of the authorities' discretion in the monitoring of inmates' correspondence. It also observed that the way in which the discretion was exercised in practice did not appear to remedy the deficiency. Accordingly, the Court took the view that the interference with the applicant's right to respect for his correspondence had not been "in accordance with the law" within the meaning of the second paragraph of Article 8 of the Convention.

35. The Court has examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned case.

36. Accordingly, there has been a violation of Article 8 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

38. The applicant claimed 25,000 euros (EUR) in respect of pecuniary damage and EUR 25,000 in respect of non-pecuniary damage.

39. The Government contested this claim.

40. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, having regard to the nature of the violations found in the present case and ruling on an equitable basis, the Court awards the applicant EUR 16,000 in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicant also claimed EUR 5,000 for costs and expenses incurred before the Court.

42. The Government objected to the claim as being unsubstantiated.

43. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicant has not substantiated that he actually incurred the costs claimed. In particular he failed to submit documentary evidence, such as bills, receipts, a contract, a fee agreement or a breakdown of the hours spent by his lawyer on the case. Accordingly, the Court makes no award under this head.

C. Default interest

44. The Court considers it appropriate that default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 8 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 16,000 (sixteen thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos Deputy Registrar	Françoise Tulkens President